IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9073 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SALIM MAHAMAD LULANIYA

Versus

DISTRICT MAGISTRATE

Appearance:

MR NIGAM R SHUKLA for Petitioner

MR SK PATEL AGP for respondent No.2-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as " the Act") by the order dated 3-7-2000, passed by the District Magistrate,

Rajkot.

2. Learned counsel for the petitioner has restricted his arguments only on the point that there is delay in forwarding and disposing of the representation. As per the argument of learned counsel for the petitioner, the petitioner made a representation on 21-7-2000 through the Jail Superintendent to concern authorities, but the same is not considered by the concerned authority. In support of the contention, learned counsel for the petitioner has placed reliance on a decision of the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad city and others, reported in A.I.R. 1999 SC 684 Rajanmal v. State of Tamil Nadu and another wherein it is held as under :

" It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider representation and dispose of the same as expeditiously as possible. The words " as soon as may be " occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and dispose of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of constitutional imperative and it would render the continued detention impermissible and illegal."

3. So the point raised by the petitioner is fully covered by the decision reported in A.I.R. 1999 SC 684 Rajanmal v. State of Tamil Nadu and another (Supra)and therefore, the petitioner is able to succeed only on that point. Therefore, learned counsel for the petitioner has restricted his arguments only on that point and not pressed other points.

4. The petition is allowed. The impugned order of detention dated 3-7-2000 passed against the petitioner-detenu is hereby quashed. The detenu-Salim Mahamad Lulaniya is hereby ordered to be set at liberty

forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J..)

*mithabhai